

FILED

OCT - 1 2004

LARRY W. PROPPS, CLERK
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Donald A. Gardner Architects, Inc.,

Plaintiff,

vs.

Log Cabin Homes Ltd. a/k/a The Original Log
Cabin Homes,

Defendant.

C.A. No.: 6:04-22416-20

COMPLAINT

(DEMAND FOR JURY TRIAL)

Plaintiff Donald A. Gardner Architects, Inc. ("GARDNER"), alleges the following in its Complaint against the Defendant, Log Cabin Homes, Ltd. a/k/a The Original Log Cabin Homes ("DEFENDANT"):

JURISDICTION AND VENUE

1. This is an action at law and in equity for copyright infringement arising under the laws of the United States of America, codified at 17 U.S.C. §§ 101 *et seq.*
2. This court has jurisdiction of the claims under 28 U.S.C. § 1338.
3. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and 1400(a) as DEFENDANT either resides in this district, may be found in this district, is subject to personal jurisdiction in this district, and/or a substantial part of the events or omissions giving rise to the claims occurred in this district.

THE PARTIES

4. GARDNER is a South Carolina corporation having its principal place of business in Greenville, South Carolina.

5. On information and belief, DEFENDANT is a Delaware corporation with a principal place of business in North Carolina.

FACTUAL BACKGROUND

6. GARDNER is engaged in the business of creating, designing, producing, distributing, and marketing original architectural working drawings architectural works, and related technical drawings. GARDNER has won numerous awards and achieved recognition for the quality and originality of its work.
7. As part of its business, GARDNER has created certain architectural works and technical drawings (collectively referred to, along with any predecessors or derivatives thereof) as the “GARDNER Designs”):
 - a. “Donald A. Gardner’s Design #225 named the “Riverbend” (the “GARDNER Design”), a rendering and floor plan of which is attached hereto as Exhibit A. The copyright in this work has been registered with the United States Copyright Office as evidenced by Certificate of Registration No. VA 599 481, attached hereto as Exhibit B.
8. The GARDNER Design contains material wholly original to GARDNER that is copyrightable subject matter under 17 U.S.C. §§ 101 *et seq.*
9. GARDNER is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the copyrights in the GARDNER Design.
10. All lawful copies and distributions of the GARDNER Design have been made by GARDNER, or under GARDNER’s consent or permission.
11. The GARDNER Design has been marketed and distributed on at least a nationwide basis, and DEFENDANT has had access to it.

DEFENDANT and Its Actions

12. DEFENDANT is a log home manufacturer.
13. DEFENDANT has been engaged, at least in part, in the business of creating, publishing, distributing, marketing, advertising, and selling residential home designs for log homes through traditional print media and the World Wide Web on sites such as www.logcabinhomes.com, and in marketing, advertising, constructing, manufacturing and selling log cabin homes and/or log cabin home construction materials according to such plans.
14. DEFENDANT has published, distributed, marketed, and advertised certain architectural designs for single family residential homes, each consisting of a floor plan and exterior elevations, that DEFENDANT has identified and marketed as follows:

The “Magnolia”, (referred to, along with any copies or derivatives thereof under the same or different names, as the “Infringing Design”). A photocopy of the Infringing Design is attached hereto as Exhibit “C”.

15. DEFENDANT has marketed, advertised, constructed, manufactured and sold log cabin homes and/or log cabin home construction materials that are based on the Infringing Design.
16. On information and belief, DEFENDANT has constructed “model houses” that are based on the Infringing Design, and has used such model houses in its advertising and marketing activities.

COPYRIGHT INFRINGEMENT

(17 U.S.C. §§ 101 *et seq.*)

17. GARNER reiterates and realleges the above allegations.
18. DEFENDANT has violated and continues to violate GARDNER's exclusive rights in the GARDNER Design (including the right to reproduce, right to prepare derivative works, and right to vend) by copying, publishing, distributing, advertising, marketing, selling, and/or constructing in the marketplace in this district, and all marketplaces reached by the World Wide Web, architectural works and technical drawings which were copied or otherwise derived from the GARDNER Design or GARDNER derivatives thereof, as detailed below:

DEFENDANT's "Magnolia" (and any copies or derivatives thereof under the same name or a different name) infringes the GARDNER Design (and any predecessor or derivative thereof).

19. As a direct and proximate result of DEFENDANT's wrongful conduct, GARDNER has been damaged.
20. DEFENDANT's infringement of GARDNER copyrights has been and continues to be committed willfully.
21. GARDNER generally avers that all conditions precedent to its rights of recovery have occurred or have been performed.

RELIEF SOUGHT

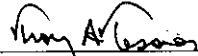
WHEREFORE, GARDNER prays that this honorable Court do the following:

22. Permanently enjoin and restrain DEFENDANT, its officers, directors, principals, agents, servants, employees, successors, and assigns, and all those in active concert or participation with it, from:
- a. imitating, copying, or making any unauthorized use of the GARDNER Design or any GARDNER predecessor or derivative thereof in any manner, and from publishing, distributing, selling, advertising, marketing, building, constructing or otherwise disposing of any copies or derivatives of the GARDNER Design and GARDNER derivatives thereof;
 - b. manufacturing, producing, building, constructing, distributing, circulating, selling, offering for sale, advertising, promoting, or displaying any product bearing any simulation, reproduction, counterfeit, copy, derivative, or colorable imitation of the GARDNER's Design and GARDNER derivatives thereof; and
 - c. using any simulation, reproduction, counterfeit, copy, derivative, or colorable imitation of the GARDNER's Design or GARDNER derivatives thereof, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, building, construction, circulation, or distribution of any product or service.
23. Direct DEFENDANT to deliver up to be impounded during the pendency of this action under 17 U.S.C. § 503 all copies or derivatives of the GARDNER's Design or of GARDNER derivatives thereof in DEFENDANT's possession or under DEFENDANT's control and to deliver up for destruction all infringing copies and all devices used for

making such infringing copies, including any homes that have been constructed in violation of GARDNER's copyrights.

24. Direct DEFENDANT to disclose to GARDNER the names and addresses of all persons and entities who have purchased or licensed the Infringing Design, who have had homes constructed from it, or have purchased homes constructed from it.
25. Direct DEFENDANT to issue a recall notice to each person who has purchased or licensed the Infringing Design or who has had a home constructed from the Infringing Design, informing each such person that the Infringing Design has been determined to constitute an infringement of GARDNER's copyright and that the person cannot resell or vend the Infringing Design or any home constructed from it without the permission of GARDNER.
26. Direct DEFENDANT to pay GARDNER such damages as the jury determines GARDNER has sustained in consequence of DEFENDANT's infringing GARDNER's copyrights, and to account for all gains, profits, and advantages derived by DEFENDANT by its infringements of GARDNER's copyrights under 17 U.S.C. § 504(b), or at GARDNER's election, statutory damages under 17 U.S.C. § 504(c), which permits a recovery of up to \$150,000 for infringement of each copyrighted work.
27. Direct DEFENDANT to pay GARDNER's costs of this action and its reasonable attorney's fees allowable to GARDNER by the court under 17 U.S.C. § 505.
28. Award to GARDNER such other and further relief as the Court may consider appropriate.
29. GARDNER requests a jury trial as to all matters other than the equitable remedies sought herein.

Respectfully submitted,



Wallace K. Lightsey (D.S.C. I.D. No. 1037)
Troy A. Tessier (D.S.C. I.D. No. 6863)
WYCHE BURGESS FREEMAN & PARHAM, P.A.
Post Office Box 728
Greenville, South Carolina 29602-0728
Telephone: (864) 242-8200
Facsimile: (864) 235-8900
wlightsey@wyche.com
ttessier@wyche.com

ATTORNEYS FOR PLAINTIFF

Dated: September 28, 2004

THE RIVERBEND



©1990

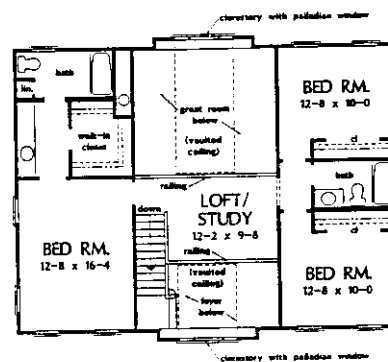
Plan 121-225**Total living: 2692 s.f.****First floor: 1734 s.f.****Second floor: 958 s.f.****4 Bedrooms, 3-1/2 Baths****Price Category D**

A double gabled roof with front and rear palladian windows give this wrap-around porch plan a stately elegance.

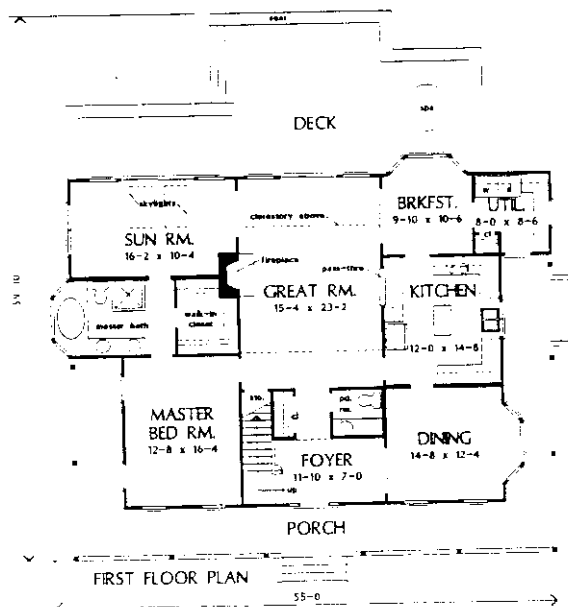
Vaulted ceilings in the two-story foyer and great room reinforce the visual drama of the palladian windows while a loft study overlooks both areas.

The spacious first floor master suite accesses the large sun room from a luxurious master bath with garden tub, shower, and double vanity.

The covered porch and outstanding deck with seating and spa expand living space outdoors. Upstairs one of the three bedrooms could be a second master with private bath.

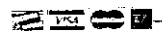


SECOND FLOOR PLAN



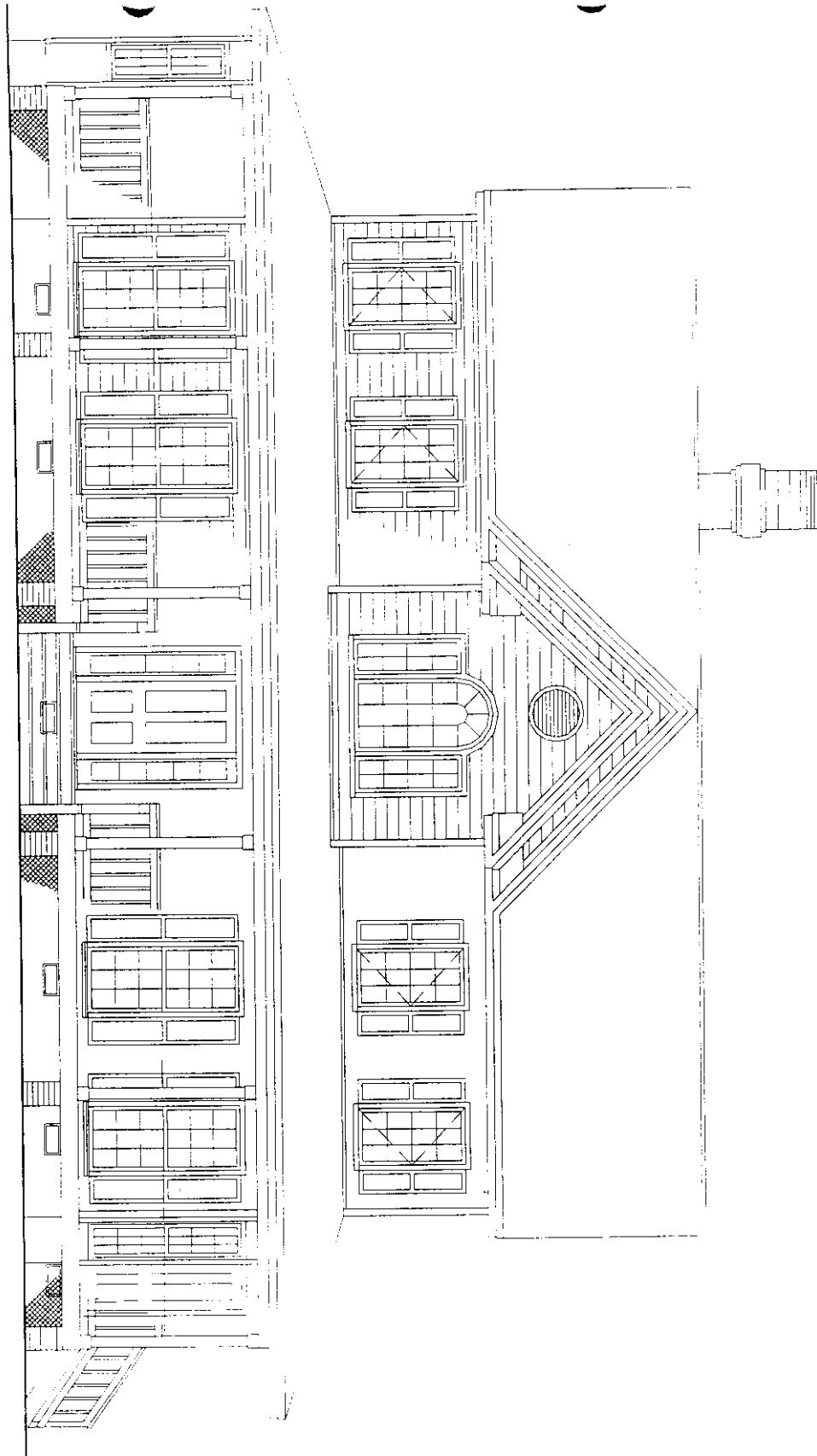
FIRST FLOOR PLAN

Order form on last page. Order by phone 1-800-388-7580


**Exhibit A**

FRONT ELEVATION - 225

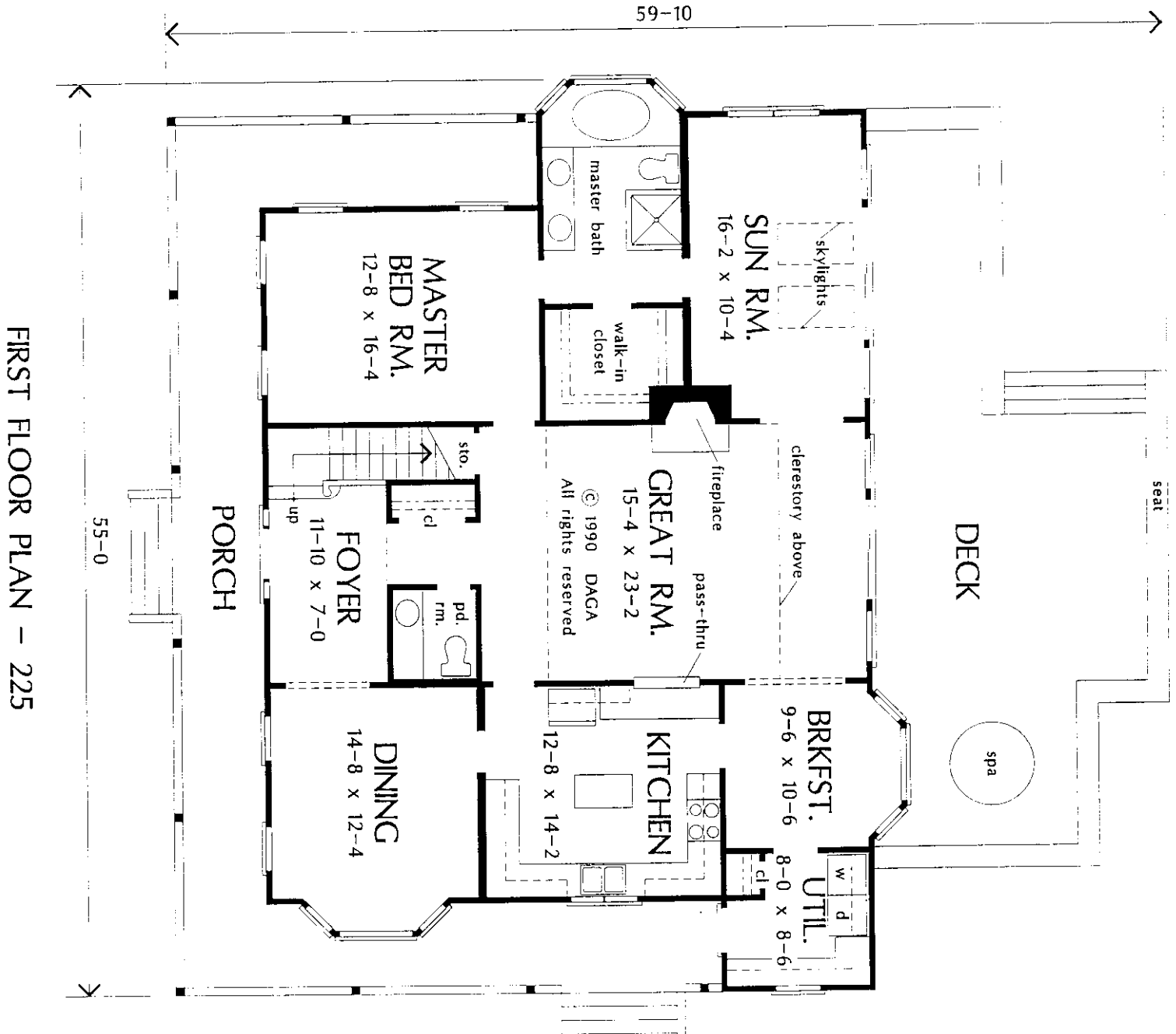
© 1990 DAGA
All Rights Reserved



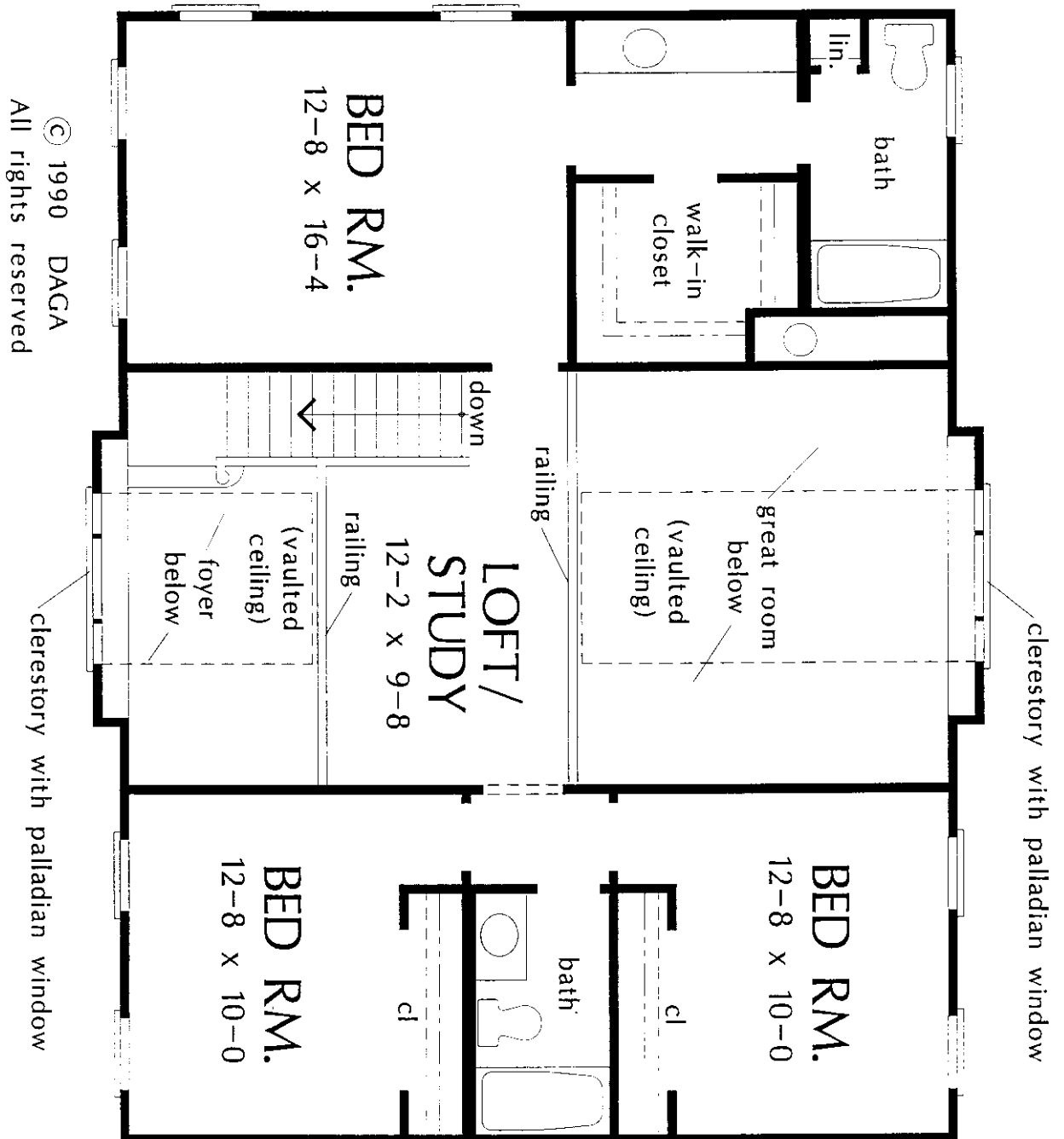
TO ORDER THIS
PLAN OR OTHERS
VISIT OUR WEB SITE


DONALD A. GARDNER
ARCHITECTS, INC.
GREENVILLE S.C.
864 • 288 • 7560
www.dongardner.com/PPG

THIS COPYRIGHTED DESIGN
IS FOR STUDY ONLY. THE
USE OF THIS DESIGN FOR
CONSTRUCTION OR ANY OTHER
PURPOSE IS ILLEGAL AND
PUNISHABLE BY FEDERAL LAW.



FIRST FLOOR PLAN - 225



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SECOND FLOOR PLAN - 225

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THIS COPYRIGHTED DESIGN
IS FOR STUDY ONLY. THE
USE OF THIS DESIGN FOR
CONSTRUCTION OR ANY OTHER
PURPOSE IS ILLEGAL AND
PUNISHABLE BY FEDERAL LAW.



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

ACTING REGISTER OF COPYRIGHTS

United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

REGISTRATION NUMBER

VA

599 481

VA

VAU

EFFECTIVE DATE OF REGISTRATION

Sept 29 1993
Month Day Year

TITLE OF THIS WORK ▼

Donald A. Gardner's Design #225

NATURE OF THIS WORK ▼ See instructions

Architectural
Working Drawing

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

NAME OF AUTHOR ▼

Donald A. Gardner, Architects, Inc.

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

☒ Yes

☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of ► USA
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NOTE

Under the law, the "author" of a "work made for hire" is the employer or other person or organization for whom the work was prepared.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ 2-Dimensional artwork

☐ Reproduction of work of art

☐ Design on sheetlike material

☐ Map

☐ Photograph

☐ Jewelry design

☒ Technical drawing

☐ Text

☐ Architectural work

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes

☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of ►
Domiciled in ►

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☐ Photograph

☐ Jewelry design

☐ Technical drawing

☐ Text

☐ Architectural work

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1990

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month ► Sept.

Day ► 10

Year ► 1990

USA

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Donald A. Gardner, Architects, Inc.
P. O. Box 16045
Greenville, SC 29606

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

SEP 29 1993

ONE DEPOSIT RECEIVED

SEP 29 1993

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

MORE ON BACK ► • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 12 pages

Exhibit B

CHECKED BY

☐ CORRESPONDENCE
YesFOR
COPYRIGHT
OFFICE
USE
ONLY

VA

599 481

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

1 Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

a. 1 This is the first published edition of a work previously registered in unpublished form.

b. 1 This is the first application submitted by this author as copyright claimant.

c. 1 This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

See instructions
before completing
this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

Donald A. Gardner

Donald A. Gardner, Architects, Inc.

P. O. Box 16045

Greenville, SC 29606

Area Code & Telephone Number▶ 803-288-7580

Be sure to
give your
daytime phone
number

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one ▼

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Donald A. Gardner, Architects, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made
by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Donald A. Gardner

date▶ Sep. 22, 1993

Handwritten signature (X) ▼

MAIL
CERTIFI-
CATE TOCertificate
will be
mailed in
window
envelope

Name ▼

Donald A. Gardner, Architects, Inc.

Number/Street/Apartment Number ▼

P. O. Box 16045

City/State/ZIP ▼

Greenville, SC 29606

YOU MUST

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO

Register of Copyrights
Library of Congress
Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 5-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1995. Please contact the Copyright Office after July 1995 to determine the actual fee schedule.



The Magnolia

The Original Log Cabin Homes Ltd. 513 Keen Street, Rocky Mount, NC 27804. 1-800-562-2246 1-252-454-1550 Fax
info@logcabinhomes.com

Magnolia

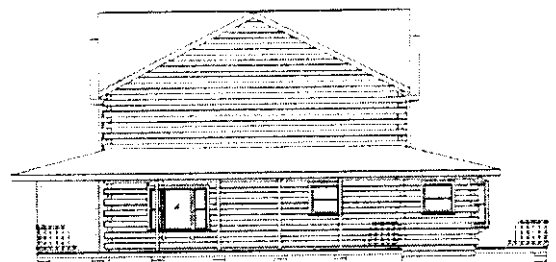
Approximately 3,270 Sq.Ft (304 Sq.M)
62' x 40' (19m x 12m)
Porch 904 Sq.Ft (84 Sq.M)

All our designs can be modified to meet your
needs and dreams

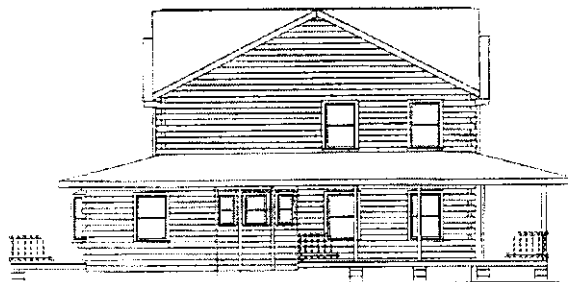
Artist rendering, actual plans may vary



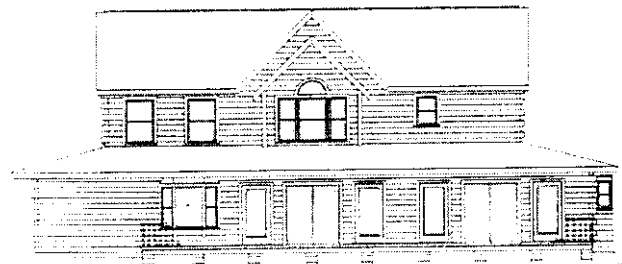
FRONT ELEVATION



SIDE ELEVATION



REAR ELEVATION

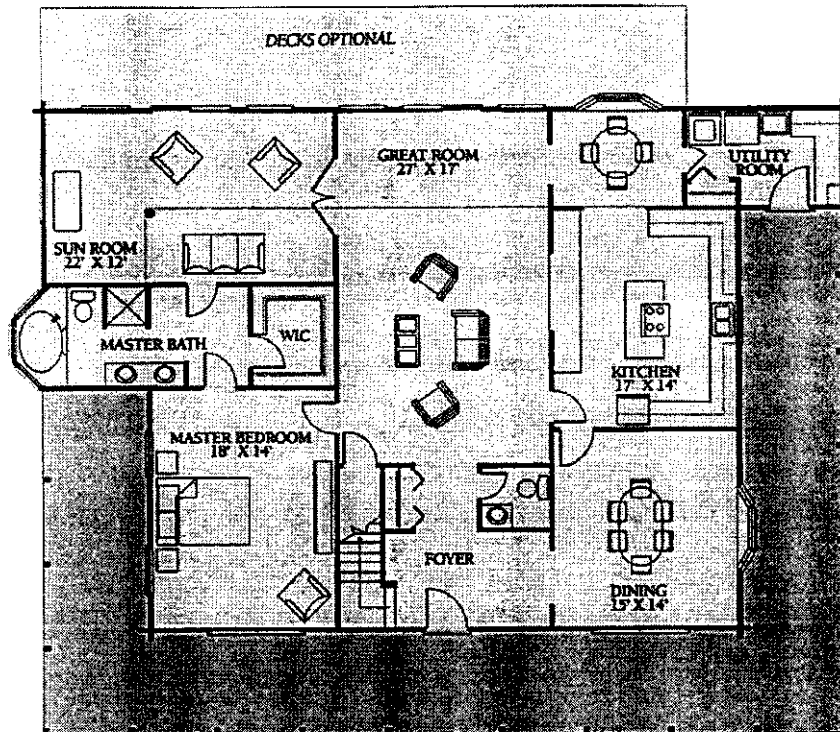


LEFT ELEVATION

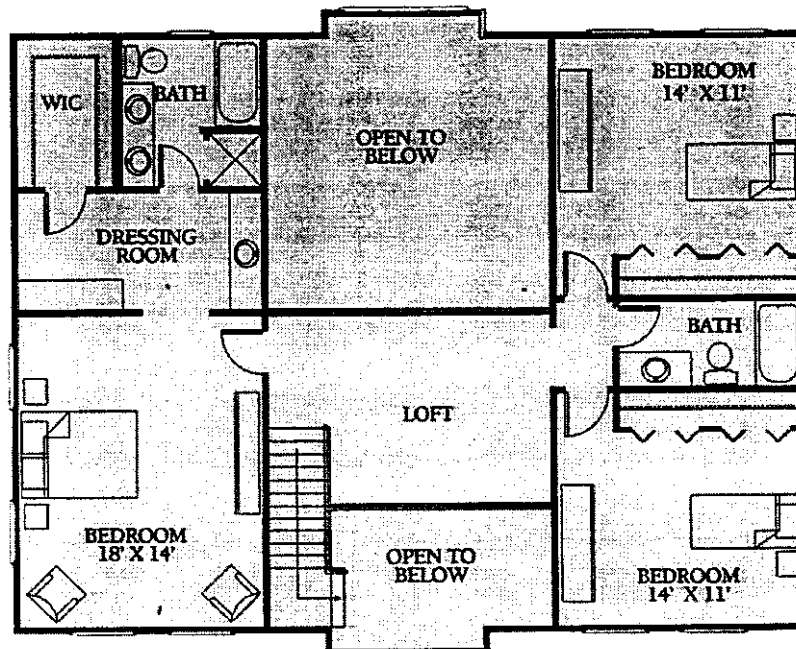


The Magnolia

The Original Log Cabin Homes Ltd. 513 Keen Street, Rocky Mount, NC 27804. 1-800-562-2246 1-252-454-1550 Fax
info@logcabinhomes.com



First Floor Plan



Second Floor Plan